

Town of Westmoreland
Zoning board of adjustment
Draft Minutes of September 18, 2013

This is a continued hearing on the application of Graves Trucking, Inc. for a Special Exception to operate a quarry at its property located on Map R-17 Lot 28. At a previous hearing on July 24, 2013 the Board voted to grant Variances of Article IV Sections 402 and 414. Within the required time frame a motion was filed by Attorney Rebecca Wagner on behalf of Patricia Rodrigues and John Corduff, near neighbors to the proposed quarry, to rehear the application for those Variances.

Present: Chairman Peter Remy, Barry Shonbeck, Brian Merry, Russ Huntley, Nancy Ranson, Ernie Perham.

Present for Motion for Rehearing: Attorney Rebecca Wagner of West Lebanon, NH and her clients Patricia Rodrigues and her husband John Corduff of Old Route 12 North, Westmoreland.

Present for Graves Trucking: Mr. and Mrs. Tim Graves, Mr. Dick Fraser of One Source Permitting and Properties, Attorney Timothy Britain of Cleveland Waters and Bass, and Peter Hicks, blasting expert.

Chairman Remy opened the meeting at 6:10pm and began by asking the Board to review the minutes of the August 21, 2013 hearing.

Barry Shonbeck made a motion to accept the minutes, as read, and Nancy Ranson seconded. All voted in favor.

Russ Huntley asked that the minutes for the current meeting reflect that several times during the August 21, 2013 hearing the acceptable slope in the ordinance was mistakenly called a 2to 1 slope when the correct slope is actually 1 to 2.

Mr. Merry asked for clarity about the proceedings of the hearing. What happens if the rehearing motion is granted? Would the Special Exception be heard? Chairman Remy said that whether the rehearing motion was granted or denied, the Board would hear the Special Exception at that meeting.

Chairman Remy asked the Board clerk to read aloud the motion for a rehearing submitted by Attorney Wagner and a portion of the Graves Trucking, Inc.'s Objection to Motion for Rehearing submitted by Attorney Tim Britain, acting for Graves Trucking, Inc. They are as follows:

LAW OFFICE OF REBECCA A. WAGNER

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1 Oak Ridge Road, # 12B
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August 21, 2013

VIA HAND DELIVERY

Westmoreland Zoning Board of Adjustment
Chair Peter Remy et al.
780 Route 63
PO Box 55
Westmoreland, NH 03467

RE: Motion for Rehearing of Graves Trucking, Inc. Variances from Article IV,

Dear Chair Peter Remy, Mr. Brian Merry, Mr. Russ Huntley, Ms. Nancy Ranson, Mr. Barry Shonbeck, Mr. Bill Campbell, Mr. Ernie Perham, and Clerk Jackie Cleary:

Per RSA 677:2, my clients, Ms. Patricia Rodrigues and Mr. John Corduff are hereby applying to the Westmoreland Zoning Board of Adjustment (ZBA) for a rehearing of the variances approved for Map R17, Lots 28 and 29 at your July 24, 2013 hearing. As you know, my clients reside at 52 Old Route 12 North in Westmoreland, NH. Their property is separated from Lot 28 only by a railway bed, and, further, their property will be directly affected because Graves Trucking, Inc. (Applicant) will cross over their property via an access easement. There is no question that my clients are directly affected by the ZBA's decision to grant the variances from Article IV, Section 402 (requiring frontage on public roads) and Section 414 (re: location of driveways). Further, because this Motion is timely filed as it is hand delivered on July 21, 2013, two full days before the 30 day deadline set by RSA 677:2 expires.

First and foremost, this Board apparently gave no weight to the concerns expressed both by my clients and by others who live near the proposed quarry. Several of the neighbors stated that the existing Graves gravel pit, located mostly in Walpole, NH, had negatively interfered with the quiet enjoyment of their properties - leaving coatings of dust on everything and permitting trucks to drive by at times other than those which are to be the operating hours of the quarry. However, the ZBA seems to disregard these statements, saying only that people have continued to construct on the road leading to the gravel pit, so it must have no impact on value. This is in error.

Second, and perhaps most importantly, it is not clear whether the Board was presented with information from the Applicant regarding the ability of the Applicant to enter and exit Lots 28 and 29 through alternate means. The survey for Mr. George Graves' property (Walpole Tax Map 1, Lot 16) is attached hereto. It plainly shows that a road passes through the entire Graves parcel, with access to the parcel from Wentworth Road, a class V road. Leaving from this

location, the Applicant's trucks can reach Route 12 via Blackjack Crossing in only a few minutes (no more than 5 minutes). Further, it appears that the ZBA overlooked the fact that this variance is not only for Map R17, Lot 28, but also for Map R17, Lot 29, which faces Wentworth Road, albeit a portion of Wentworth Road that exists on paper but has yet to be reconstructed. It is important to note that Lot 29 is owned by the George Graves Revocable Trust, rather than the Applicant.

Because:

- the Applicant can access Mr. George Graves' parcel via the temporary use agreement from the state over the old railway bed;
- the Applicant has an easement to cross and utilize this parcel;
- the Applicant's project calls for significant use of this parcel;
- and part of the property included in the Application is owned by Mr. George Graves (through his trust) and appears to be a part of Walpole Lot 16 on the attached survey, it would be fair to treat Walpole Lot 16 as a part of, or at least an accessory to, the Applicant's own Lot 28. Mr. George Graves' parcel has significant frontage on Wentworth Road, frontage that it can easily share with the Applicant by adjusting the boundary of Lot 29. Thus, contrary to the ZBA's determination, the subject parcel's lack of frontage is easily remediable, a reason which this ZBA stated is often a reason to deny a variance from the frontage requirement because of a lack of unnecessary hardship. Thus, seeing this project and the three parcels involved as a whole, it is clear that the ZBA's approval of a variance for lack of frontage is in error, as is its approval of a variance regarding driveway placement.

Thank you for your attention to this matter.

Sincerely,
Rebecca A. Wagner
NH Bar ID 20514

Chairman Remy asked the clerk to read the following portion of Attorney Britain's Objection to Motion for Rehearing:

No Grounds Exist for a Rehearing

7. The Movants first argue that the Board did not consider their concerns relating to truck traffic on Old Route 12 North related to the existing gravel pit on the land owned by The George R. Graves Trust in Walpole, New Hampshire (the "George Graves Property"). See Motion at Page 1-2. This argument has no bearing on the requested variances, but rather relates, if at all, to the Application for Special Exception filed by Graves to establish and operate a new quarry on the Property.

8. Moreover, the Board thoughtfully considered these issues in its deliberations and fully evaluated the impact that granting the requested variances would have on value of surrounding properties. The Board properly concluded such relief would have no adverse impact to surrounding property values. Regardless of the ultimate use of the Property, the fact remains that the Property is landlocked and needs relief from the frontage and driveway location requirements of the Ordinance for any economically productive use of the Property, by right or by special exception.

9. The Movants next argue that the Board failed to consider alternative means of access across Tax Map R17, Lot 29 owned by the George R. Graves Trust (the "George Graves Property"). See Motion at Page 2. The Movants' arguments are factually inaccurate and legally untenable.

10. First, Applicant's variance requests do not pertain to the George Graves Property and nothing in the Application suggests otherwise. The Movants' assertion to the contrary is simply wrong. The George Graves Property is referenced on the Application for Special Exception solely because the proposed sedimentation basin to control runoff from the proposed quarry during its initial development will be located on the George Graves Property.

11. Second, except for a small portion of the property adjacent to the town line, the George Graves Property is located almost entirely in Walpole. The frontage for the George Graves Property is the Wentworth Road, and the improved section of the Wentworth Road is located entirely in Walpole. The internal road system on the George Graves Property is located entirely in Walpole. This Board obviously has no authority to regulate activities in neighboring towns. Further, this Board has no authority to grant the Movants' apparent demand to grant access or compel the Applicant to obtain access over a property not owned by the Applicant and located in another town. See generally, Loughlin, *Land Use Planning and Zoning*, 4th Ed., 15 N.H.P. §37.09 (private covenants and restrictions have no bearing on whether an owner is entitled to a variance or special exception).

12. For the foregoing reasons, the Motion is entirely devoid of merit and must be

denied.

Chairman Remy asked for comments by the board.

Mr. Shonbeck said he was reminded that the trucks will exit the blasting site to the right.

Mr. Huntley said that the board had spoken at great length about the issues raised by Attorney Wagner. The traffic idea had come up over and over.

Mr. Remy said that Attorney Wagner was at a disadvantage, having not been involved in the earlier hearings. But at the Special Exception hearing the Board would revisit some of the issues and some of the testimony. He asked for thoughts about the Motion's suggestion to send the traffic out through Walpole?

Mr. Shonbeck said that the owners of Lots 28 and 29 may be family but they are two different owners. There is already access that is being used today through the railroad cut. The suggestion that Graves Trucking should ask Graves Trust to provide access to an unimproved section of Wentworth road is not something the Board can impose.

Mr. Huntley said that where the blasted material is taken to be processed is not necessarily a part of this application. If the material were being trucked to Swanzey or some other place it would not be an issue. The application is just for a quarry and not for an entire business enterprise.

Mr. Merry said that the issues raised about hours and dust are enforcement issues and not zoning issues.

Mr. Remy reminded the Board that no hours had been determined yet. Mr. Merry remembered that there had been a preliminary discussion set out in round numbers especially about the blasting part. The hours were also stated in the application, Mr. Shonbeck said.

Mr. Merry said he agreed that asking the Board to treat the three parcels as one was not something he could accept in the legal sense. The application is for the parcel of land owned by Graves Trucking.

Chairman Remy asked for other comments or questions from the Board. As there were none he called for a motion.

Mr. Shonbeck made a motion to deny the motion for a rehearing of the Variances of Article IV Sections 402 and 414. Mr. Merry seconded and all voted in favor of denying the motion for a rehearing.

Mr. Remy moved on to the discussion on the Special Exception. He asked Mr. Fraser to recap the proposal and the arguments in favor of the Special Exception for Attorney Wagner's benefit.

Mr. Fraser began by saying that he had received a statement by Mr. Gary McRae a resident of Route 12 North who had originally signed the petition circulated before any hearings were held and submitted by Ms. Rodrigues and Mr. McRae asked to have his name removed from the petition. Attorney Britain pointed out that of the five property owners who had originally signed the petition, three had withdrawn from the petition.

Mr. Fraser said he would be glad to answer any questions Attorney Wagner might have that she thinks need to be answered.

Chairman Remy told Attorney Wagner that he knows she must have read the minutes and Mr. Fraser's booklet outlining the proposals and the arguments in favor of it but he wanted to make sure that she has a chance to ask any other questions and make points that she feels need to be heard.

Attorney Wagner said that her initial question was about Lot 29. The application does include references to both Lots 28 and 29. Attorney Britain's objection to the rehearing states that Lot 29 is involved only as the place where the sedimentation basin will be, and she wanted clarification whether there would be any further involvement of Lot 29. Would the project expand into that lot or any other use along those lines?

Mr. Fraser said that the sedimentation basin is meant to be a temporary structure. When the quarry site is first being developed it doesn't have the ability to contain storm water run-off. It will have some ability but they thought it would be prudent to have a backup system such as the sedimentation basin that could handle what the floor of the quarry could not. It is designed as a temporary structure. As the quarry expands and the quarry floor expands the storm water will be contained on site.

Attorney Wagner asked if he envisioned removing the sedimentation basin at some time in the future when it is no longer necessary.

Mr. Fraser said that he is not in favor of taking Best Management Practices out of any operation if it serves a purpose.

Attorney Wagner said she was just trying to nail down what he meant by 'temporary'. Did he plan to remove it?

Mr. Fraser asked why he would do that. Attorney Wagner said because he used the word temporary.

Mr. Fraser said he never used the words 'remove it'.

Attorney Wagner asked if she was right that Lot 29 is not part of the project. That is owned by Graves Trust as opposed to Graves Trucking.

Attorney Britain responded that the application is for the property owned by Graves Trucking. There is one feature in connection with that project that is located on Lot 29. That is the sedimentation basin. That is the reason it is referenced in the Special Exception application.

Mr. Remy said that he had asked the same question. He asked Mr. Fraser to pull up the map and invited Attorney Wagner to come forward to view it. Attorney Wagner asked for clarification about the present tree line and the clear cut area, which Mr. Fraser pointed out to her.

Patricia Rodrigues said that Lot 29 now incorporates where the sedimentation basin is supposed to go although originally Lot 29 was a small lot further up and behind the property.

Mr. Remy asked her to step up to the map and show what has changed from the original maps the Board was provided with.

Ms. Rodrigues said that on the current Westmoreland map Lot 29 is somewhere in this vicinity. She pointed to the map. However, through boundary agreements that George Graves made with the previous owner of Lot 28 he added a section on to his Walpole property and last summer he also made another agreement with Wes Staples and other individuals to join 'this' with Lot 29 as you see on our current tax map. That's why Mr. Remy says that the sedimentation basin is on Lot 29. She said that Lot 29 is currently being investigated for several violations including taxes not paid and excavation without a permit.

At this point Mr. Remy interrupted and said that her last comments on Lot 29 were not relevant to the application . All those other things are hearsay and not acceptable but he thanked her very much for her input.

Attorney Wagner said the reason they are focusing on Lot 29 is that they have looked at aerial maps and it looks like Lot 29 has been, basically, mined. One of the requirements for a Special Exception is that it would not be injurious, obnoxious, or offensive to the neighborhood. They would not want the Board to approve a Special Exception that would potentially be an enforcement issue. Their concern is ensuring that if this is permitted it is done properly, that it doesn't harm the environment. Because of what they understand is happening on Lot 29 they are concerned that it might be an issue on Lot 28, as well.

Mr. Remy said that her comments were helpful and her points well taken.

Attorney Wagner went on to say that they are concerned because it appears that the quarry and the old gravel pit might become one expanded entity and they want to make sure that the Board addresses all the concerns and effects that would have on the neighborhood. She asked if she might present the aerial pictures to the board.

Mr. Remy said he was not sure what purpose they would serve.

Attorney Britain said he thought they were irrelevant. The activities on Lot 29 are in the town of Walpole.

Mr. Remy said that Lot 29 is actually in Westmoreland.

Attorney Britain said that he meant the gravel activity of Lot 29 is in Walpole. The strip of land with the sedimentation basin has nothing to do with the sand and gravel operation.

Attorney Wagner said they are focusing on the portion of Lot 29 which is in Westmoreland.

Mr. Remy asked what the board thought about introducing more information about the Lot that is not in question.

Mr. Huntley said that it might be interesting as a point of interest but he did not know whether anyone on the board was qualified to interpret the map with measurements, etc. and give any kind of testimony. Where did the maps come from? Was it Google?

Attorney Wagner said one is from Google maps. One is from USDA maps.

Mr. Huntley said that Google Maps cannot be used for such a purpose. Their maps are not even rectified. They would need photogrammetrist to interpret the maps. There are no property lines on the maps . You could not even tell where the properties are. Without such factual information examination of the maps would take a lot of time and might confuse the issue.

Mr. John Corduff asked how many board members were involved in the gravel business.

Mr. Remy asked why he wanted to know and then told Mr. Corduff that in his 'previous life' he had worked for Old Castle. That was how he had met Mr. Fraser. The job had involved sand and gravel and then later

cement blocks which utilized sand and gravel. None of the other Board members had connections to the gravel business.

Ms. Rodrigues asked if they could present a map of Lot 28.

Mr. Remy said that they had a good map of Lot 28. Did Ms. Rodrigues have a better one?

Attorney Wagner said that they had been looking through a 2010 ZBA file where the board had voted unanimously to adopt a definition of a quarry which is consistent with 155.e and includes sand and gravel operations. She brought it up because there had been talk at previous meetings about whether section 441 applies to a quarry. It seems that quarry specifically includes sand and gravel. Based on that the Westmoreland zoning ordinance refers to sand and gravel but does not include the word quarry and does not include the word rock. Turning this around it would seem that when the ordinance refers to sand and gravel it also includes quarry.

Mr. Remy asked what her specific question was.

Attorney Wagner asked based on the previous decision did the term sand and gravel also include quarry and vice versa? If it does then 441.4 would apply to this project. She proffered the notice of that decision.

Mr. Remy said that basically they had made the decision based on 155.e that quarry and sand and gravel were synonymous terms. The zoning ordinance she refers to is very specific, mentioning only sand and gravel. But, he said, it may not be the next time. But 'sand and gravel' and 'quarry' are not the same thing.

Attorney Wagner held up a map of an aerial view of Lot 28 and the whole area.

Mr. Remy asked if Attorney Wagner really thought this was relevant to the issue or was it just taking up time.

Attorney Britain said that the board had gone on a site visit and had actual knowledge of the site and he did not think that an aerial photo would be better than that experience.

Mr. Remy asked the board to vote on whether to see the map.

Nancy Ranson said she did not think it would be worthwhile since there were no property or boundary lines. Mr. Huntley asked the source of the map. It was a USDA Foreign Service Agency map date November 2011. Mr. Remy said he was sorry but the date of the map especially made it irrelevant.

Attorney Wagner raised the point about the stratified aquifer in the area. They have spoken to the Upper Valley/Lake Sunapee Regional Planning commission who were the ones who completed the map that they feel is accurate. She said that there was a representative from them present who could speak to the issue. Ms. Rodrigues said that the representative was from the Westmoreland Conservation Commission.

Marshall Patmos of the Westmoreland Conservation Commission introduced himself. He was concerned about the issue of the accuracy of his maps. They get information from the Southwest Region Planning Commission and several different agencies. They have all said that their information is the same. He would like to know where the dissenting information came from. If it appears their maps are correct they would like to correct their own maps. He emphasized that the aquifer is a geological feature and not a water feature. It just has the potential to become a water feature.

Mr. Fraser said that his source is through the One Stop Program GIS and he had included all of the water features on this plan. He said that a stratified drift aquifer requires sand and gravel because that is how the water flows through. Since this entire site is bedrock and not sand and gravel it defies logic that there is a stratified aquifer. Mr. Patmos agreed with him. Mr. Fraser said that the stratified drift is not on the property. Ms. Rodrigues asked if there could be sand and gravel beneath the rock.

Mr. Remy asked Mr. Fraser how deep the ledge was likely to be. Mr. Fraser said probably miles.

Mr. Fraser said that the project has already gone through a technical review by the NH DES Alteration of Terrain department. Their main concern is surface water and ground water.

Mr. Merry clarified that they agreed that there was no aquifer on the site but there was one nearby. Was there one across Route 12?

Mr. Fraser said it was across Route 12, about 1500 feet away.

Mr. Patmos again said that it did not mean that there was water in the aquifer, just the potential for water.

Mr. Remy recapped that the experts have looked at this, from the state, and they have concluded that there would be no harm to either the groundwater or the surface water.

Attorney Wagner asked whether there would be any other facilities on Lot 28?

Chairman Remy said he had asked the same question and was told that there would be no permanent structures on Lot 28. It had been discussed previously that there could be a porta-potty.

Chairman Remy reminded the board and those present of the specific criteria for granting a Special Exception.

John Corduff asked the board what would constitute a reason or a level which would prevent a proposal from being approved.

Nancy Ranson said that cases were considered individually and the nuisances were evaluated by individual circumstances.

Mr. Shonbeck said that the noise ordinance stated an acceptable level of noise but other nuisances were not quantified in the ordinances. It was up to the Board to evaluate them according to where and what kind of noise it is.

Mr. Remy said that it was a good point. He mentioned that the trucks from the quarry would be turning away from the neighbors' properties to be processed at the George Graves property.

Mr. Corduff responded and then they will come back across my property to get out to Route 12. They do have to leave.

Attorney Wagner said that potentially they could go over Wentworth road but they prefer to leave by going through the railway bed and across her clients' property. The trucks will be coming in through her clients' property, going over to the Walpole property, and then coming back out. It is her understanding from the application that in the next ten years or so the gravel pit will be closing and the machinery will be moved to Lot 28.

Mr. Remy asked if she could reference that in the application.

Attorney Wagner found the reference on page 12 of Mr. Fraser's booklet. She read from the second paragraph:

"The proposed project will seamlessly dovetail and ultimately replace the existing George Graves operation. In fact, the subject project will utilize the same earth movement equipment, haul trucks, aggregate processing equipment, and transportation routes currently used at the existing site."

Mr. Fraser said that Mr. Remy should look at the last paragraph on page 10 which states, "The primary and secondary crushing equipment, screens and conveyors will remain where they are currently located."

Mr. Remy asked for comments from any abutters.

Wesley Staples inquired, "What is Lot 29?"

Attorney Britain responded that Lot 29 is the area between Lot 28 and the George Graves Property.

Attorney Wagner said that when she refers to Lot 29 and looking at the Westmoreland tax map, Lot 29 is the property to the right of Lot 28.

Mr. Remy said that there is an error on the Westmoreland tax maps. After looking at the maps for the project he had gone to the town hall to clear up the discrepancy. There is a sliver of land between Lot 28 and Lot 29 which Ms. Rodrigues had pointed out early on so he had gone to the Town Hall and looked it up. Ms. Rodrigues was absolutely right when she had pointed it out at the site visit.

Mr. Shonbeck said that he had been confused, too. The map presented by Ms Rodrigues is correct and the tax map is incorrect.

Mr. Huntley, who is a surveyor, said that it is very common for tax maps to be wrong. People are always discovering discrepancies.

Attorney Wagner said that it is clear from the map that she submitted with her motion for a rehearing where Lot 29 is, basically from the railroad to the unused portion of Wentworth Road.

Mr. Remy thanked Attorney Wagner for the map which clarified the Lot 29 property.

He asked whether there was anyone else who would like to make a comment or ask a question before he closed the public hearing.

Gretchen Fowler identified herself as Tim Graves' sister. She said she had been present for the last four or five meetings and had found them very interesting. She said that her brother was just trying to make a living. He was a one person company, the only employee and there was only one truck. He spent a lot of money trying to do this right, by the book. He had hired Mr. Fraser and an attorney. She lives not very far away. Route 12 is noisy twenty-four hours a day. She can hear the trains on the other side of the river. There is always going to be noise, no matter where you live. Nobody will even see this business. It is out of sight.

Attorney Wagner said that along the same lines, her client has put up with the effects of the Graves gravel pit. It has impacted her life, and she feels that it will impact her property value. And she does feel that the project is obnoxious, offensive and injurious to the neighborhood.

Mr. Remy asked the clerk to read the letters sent by another near neighbor, Lois Nimke.

The letters are as follows:

Town of Westmoreland
Zoning Board of Adjustment
Box 55
Westmoreland, NH 03467

May 20, 2013

Dear Sirs,

Concerning Graves Trucking excavating bedrock behind my property, I am very concerned by possible excessive noise. It has been very peaceful here and at my young age of 82 I hate to have to put up with excessive noise.

I would like to say NO but don't think my opinion would do much. The Graves seem to think they have all the say in Walpole and Westmoreland. Anyway this is what I have to say.

Sincerely,
Lois Nimke

Town of Westmoreland
Zoning Board of Adjustment
Box 55
Westmoreland, NH 03467

May 20, 2013

Graves Excavation

Dear Sirs,

Some more things came to mind
after writing my first letter.

I am wondering how long the
excavation would take and also if
he could enter on Wentworth Road.
Now he comes through the old
gravel bank onto Old Rte. 12 N. and
the dust settles on everything. I do
not want to make trouble, just
want to have it nice. I have lived
here 42 years, have nice neighbors
and am terrified to have to move.

Sincerely,
Lois Nemke

Town of Westmoreland
 Zoning Board of Adjustment
 Box 55
 Westmoreland, NH 03467

May 27, 20

Grave Excav

Dear Sirs,

Something else has come to mind about the above excavation.

My 2 acres of land is all on ledge. Even one corner of the cellar is on ledge. My bank in back is bordered by a fence. Beyond that fence a little way up to the old railroad roadbed. Grave Land borders the roadbed. The state owns this parcel of land from mine and Grave Land.

If Grave decides to do blasting I am afraid this will affect my well which is in back of my house. Also there are trees at the top of my bank and some on state property. Blasting could loosen some of their roots and they could come down on my house. My house insurance covers disasters of nature but not this type of disaster. I do not have the money to fix problems to the house or a new well. This bothers me a lot. Have been looking deep over it. I hope I won't think as

July 29, 2013

Town of Westmoreland
Zoning Board of Adjustment
Box 55
Westmoreland, NH 03467

Graves Excavation

Dear Sirs,

I realized that I didn't mention in my prior letters that for the last 17 years that the present gravel bank was in operation the truck drivers used my property to throw out their garbage. I used to take a bag and pick up this junk, empty soda cans, paper coffee cups, napkins and empty bottles. I got tired of this. Now I couldn't do this as I age I am not very stable on my feet and having to go into the ditch to pick up this stuff then and on the bank, then backing up to the road I could easily fall and break something.

Also trucks used to haul garbage on weekends as well as 6:30 A.M. mornings. I hate to have to go through this again

Sincerely,
Lois Nimke

Attorney Britain said that he respectfully recommended that Chairman Remy close the hearing. They have been discussing this project through four hearings. Mr. Graves has brought in experts who have given testimony. There is nothing left to discuss.

Ms. Rodrigues responded that previous to this proposal there was tree cutting on Lot 28 was not permitted and it resulted in runoff and erosion. Mr. George graves is retired and and Mr. Tim Graves has been in charge. She does not feel he has used best management practices in the past and is not reassured that he would do so in the future.

With that, Mr. Remy closed the public hearing and began the Board's deliberation of whether the proposal met the criteria for a Special Exception. He asked the board to speak to the first criteria; that **the specific site is an appropriate location for such a use.**

Mr. Merry said that the site visit convinced him that the site is an appropriate one. As was stated before, you have to go where the rock is, and the rocks are at that site.

Ms. Ranson said that she agreed with Mr. Fraser's last paragraph on page 12 for the first criteria. He wrote, "Simply stated, the art of excavating construction aggregate would not alter the essential character of the locality since the exposure to the use has been evident for decades."

Mr. Shonbeck said that for the business of getting aggregate, the site seems almost perfect. It has a steep slope of ledge; it doesn't seem to affect with any water resources with the possible exception of the brook and they have a plan for mitigating that; there is already a similar operation on the adjoining property so the site and the proposal seem well matched.

Mr. Huntley said he agreed with Mr. Shonbeck and adds further that the slope is northerly facing and the only other property that will see it is across the river or in Walpole. It seems appropriate to put everything together in the one area.

Mr. Remy moved on to the second criteria: **Such approval will not diminish the values of the surrounding properties or otherwise be injurious, obnoxious, or offensive to the neighborhood.**

Mr. Merry said that to him the difference between the present operation and the proposed operation is the blasting. But the experts who testified about the blasting convinced him that the limited amount of blasting that will be done on this site will not be a significant problem and should not affect the property values. If they are wrong that's another story but he had to rely on what they said. Other than that it appears that what has been done in the past will be done again. Trucks will continue going down that road. Will there be dust/ Probably, but there is now.

Ms. Ranson read from Mr. Fraser's booklet about the best management practices for mitigating dust. "Fugitive dust within excavation sites is now regulated by the NH Department of Environmental Services. Dust will be effectively mitigated by using water or calcium chloride as needed upon the entrance way and within the floor of the site.

Mr. Huntley said he had no doubt that this proposal is offensive to some of the neighbors but what goes on there now is already offensive. He doesn't know what goes on at the George Graves property but he suspects

that it predates a lot of the regulations that have been put in place. But there are a lot of rules now that were not there for the sand and gravel operation. The things that were obnoxious in the past nothing can be done about but the present proposal must live up to the regulations and may actually improve the previous situation. It doesn't diminish the property values; it doesn't do anything but maintain the status quo. You can't speculate on what will happen ten years from now. If he had speculated ten years ago he would have thought his house would have increased in value but it has gone the other way. He doesn't think this proposal will have a detrimental effect on the property values.

Mr. Merry added that any recommendation to the planning board be very specific, especially hours and months of the years.

Mr. Shonbeck expanded on his comment about the slope. Since it is very steep it is not suitable for farming. He can feel the pain of the neighbors who will find it obnoxious. He lives along Route 12 which is being developed and has lived there for fifty years. He would prefer that it not be developed but things change and he had no guarantees that things wouldn't change. The testimony he has heard lead him to believe that it will not be any more obnoxious and may even improve the present situation. There is nothing the Board can do to stop the development of the Graves Trust property and the Board would have no control over that. This proposal they do have control over.

Mr. Remy said that a report submitted as testimony on a previous application for expansion of a sand and gravel operation described a 175 acre project and concluded that property values would be diminished. It was quite a long report but one sentence stood out and it was that the diminution only occurs once. He also emphasized that the application they are looking at is for blasting at one site with the rock being transferred to a second site on an interior private road.

Mr. Shonbeck reminded Mr. Remy of the petition that had been submitted to the board. Of the original signers what is the count of those who support the project and those against?

Mr. Remy asked the clerk to find the original petition and read the names. There were five property owners who signed it and three of those five had asked for their names to be withdrawn from the petition.

Mr. Remy moved on to the third criteria: there will be no nuisance or hazards to vehicles or pedestrians.

Mr. Shonbeck raised the issue of how the railroad cut affects people walking on the railroad path or snowmobiles or four wheelers. Mr. Huntley said that the traffic on Old route 12 will remain at the status quo. Mr. Remy remarked that change is the operative word. Some years there is more or less demand for the product and that will not change.

Mr. Merry read from Mr. Fraser's booklet page 14, "A stabilized construction entrance will be built at the driveway entrance to the site. This device is designed to ensure that fines and small aggregates are 'cleaned' from tires prior to the transportation vehicle entering other roadways." Mr. merry thought this was an important point because tires that might kick up stones would be a hazard to other vehicles on the road. Assuming that the device works they have anticipated the problem and mitigated it.

Mr. Shonbeck said that pedestrians on the rail trail could be alerted with signage, so while it's a concern it can be mitigated.

Mr. Perham asked whether this trail and operation hadn't been using the trail and watching for trucks for the past twenty years? Mr. Remy said that they must weigh this in the context of a new operation.

Mr. Remy moved on to the fourth criteria: **Adequate and appropriate facilities will be provided for the proper operation of the proposed use.**

Mr. Shonbeck mentioned that they have provided a sedimentation basin for run off control until the run off can be infiltrated . they have a pot-a-potty .

Mr.. Huntley said there is a plan for storing the stumps.

Mr. Merry said they would not be storing flammable materials.

Mr. Shonbeck mentioned the construction and maintenance of a safety berm.

Mr. Remy said that the berm would be erected before blasting. Is there a distance that should be specified between the berm and the face of the pit.

Mr. Shonbeck asked if these conditions were premature.

Mr. Remy said that if there is a motion to grant the application it would probably be with conditions so those conditions need to be established before any motion is made.

Mr. Shonbeck said he had his own small list of things that need to be considered.

Mr. Remy mentioned the easement that had been provided by George Graves had been signed by his wife's aunt and uncle. Attorney Britain said that he had an updated easement signed by the George graves Trust instead of George Graves personally.

Attorney Wagner requested a copy of that easement and Attorney Britain said that he would provide that to her.

It was decided to formulate the conditions prior to making a motion starting with the hours.

There was a discussion about emergency hours and what constituted an emergency. Mr. Remy suggested using the term 'natural' emergency.

Mr. Merry thought it should be stated that the trucks coming out should be covered but Mr. Remy said that loads of large rocks would not need to be covered.

Mr. Shonbeck asked for advice on the distance between the berm and the edge of the pit.

Mr. Remy suggested a minimum of ten feet.

Mr. Merry talked about signage. He assumes that there should be something that alerts an occasional walker to an upcoming blast. Mr. Hicks said there is a series of horns to alert and then the all clear after the blasting is over.

The walking trails must be maintained so that people walking through there can be there is a safe way.

Mr. Remy said that since the state owns that right of way they should be in charge of the trail.

He added that the easement by The Graves Trust should also include the sedimentation pond.

Attorney Britain informed the Board that the easement had been redone so that the grantor was now The Graves Trust rather than George Graves.

There will be no permanent structures on Lot 28.

There will be no crushing of rock on Lot 28.

Mr. Shonbeck suggested that normally the blasted material be brought to the Graves Trust property, Walpole map-1 Lot 16.

Mr. Shonbeck suggested that the blasting be done in a way that minimizes the effects on the neighbors.

Attorney Britain said it would be better to leave the blasting to the experts.

Mr. Shonbeck said that at an earlier hearing Mr. Key had said that he could and would do a pre-blast survey to Mrs. Nimke and Ms. Rodrigues and those within 500feet as required by law.

Attorney Wagner asked that the well of her clients be tested along with the pre-blast survey as Mr. Key had offered at an earlier hearing.

Mr. Hicks said that the well testing is not an actual part of the pre-blast survey. It consists of a quantity and quality test.

Mr. Remy said that it will be added as a condition because Mr. Key had offered it at a previous hearing.

Ms. Rodrigues said that in addition to the test she wanted assurances that any damage would be rectified.

Mr. Remy told her that was a civil matter and could not be put as a condition.

He inquired whether the Board had any other conditions that should be stated. No one did so Mr. Remy said he would entertain a motion.

Mr. Shonbeck made a motion to grant the Special Exception with the following conditions:

1. The normal hours of operation of the quarry will be 7am to 5pm Monday through Saturday. The quarry will be mined during the months of May through November.
The normal hours of trucking will be 6am to 7pm Monday through Saturday.
Emergency hours will be up to three 24 hour days and then at the discretion of the selectmen.

2. A safety berm will be erected before the blasting begins and will be maintained at a minimum distance of 10 feet between the berm and the blasting area.

3. Signage will be in place to warn of blasting and trespassing.

4. Stumps will not be stored in sight of neighbors.

5. No permanent structures will be built on Lot 28.

6. There will be no crushing operations on Lot 28.

7. Normally, material removed from Lot 28 will be trucked to the Graves Trust property.

8. Pre-blast surveys shall be offered to Lois Nimke, Patricia Rodrigues and John Corduff, or the current residents of those properties, as well as to those within 500 feet of the blast site, as required by law. Quality and quantity well tests will also be offered to Lois Nimke and Patricia Rodrigues and John Corduff.

Nancy Ranson seconded the motion. All voted in favor.

Mr. Huntley moved to adjourn the meeting at 9:00pm and Mrs. Ranson seconded. All voted in favor.

Respectfully submitted by Jackie Cleary, Zoning Board Clerk